Supreme Court, U.S.
FILED
DEC 29 1995
CLERK

(3)

Docket No. 95-798

IN THE SUPREME COURT OF
THE UNITED STATES

October 1995 term

GLENN R. WAITE,

Petitioner,

vs.

W. SCOTT CARPENTER, M.D.,

Et. Al.,

Respondents.

On Petition For Writ Of Certiorari
To The Nebraska Supreme Court and
The Nebraska Court of Appeals

PETITIONER'S REPLY BRIEF

Glenn R. Waite,
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712
Petitioner

Questions Presented

Petitioner rejects the Respondents restatement of the Questions presented since this Court always determines whether it has jurisdiction. The Questions presented are:

(1) May the Nebraska Courts refuse to determine the federal question of whether the trial court violated the rights of Glenn R. Waite, under the 14th amendment to the U.S. Constitution, by claiming that the trial court, under the law of the case doctrine, lacked jurisdiction to consider his motions when the federal question was presented for the first time on this appeal?

(2) Can the Nebraska Courts deny Glenn R. Waite, a resident of Wyoming, his constitutional rights under Article IV, section 2, clause 1, and Amendments 1 and 14 of the U.S. Constitution by holding that the trial court,under law-of-the-case doctrine, lacked jurisdiction to consider his motions to vacate a judgment of dismissal alleged to be void because a disqualified judge heard arguments at the hearing which lead to dismissal and the court failed to bring all indispensable parties into court when the Nebraska courts allow its own residents the privilege of vacating a void judgment at any time (even after decision is affirmed on appeal) and the privilege of admitting newly discovered evidence as if no appeal had been taken and the privilege of having all indispensable parties whose rights will be affected brought into court before a final decision is rendered?

(3) Did the Nebraska trial court violate the rights of Glenn R. Waite, under the 14th amendment to the U.S. Constitution, on September 3, 1991, when the court provided him with a disqualified judge and, on April 11, 1994, when the court had not disposed of a Motion for Continuance and Motion for Change of Judge and had not provided him with an opportunity to show why the judge should recuse himself?

List of All Parties

The Respondents state [Brief Opp. ii] that the petitioner's list of parties is acceptable with the exception that the Petitioner in the underlying proceedings was "Glenn R. Waite, Personal Representative for the Estate of Harriet I. Waite, deceased" not "Glenn R. Waite" as denominated in Petitioner's Petition for Writ of Certiorari". However,"Glenn R. Waite" is the only real party in interest in the cases.

It was "Glenn R. Waite" who filed the original cases on April 8, 1995 in the name of "Glenn R. Waite, Personal Representative of Harriet I. Waite, deceased". On or About August 7, 1991, the Respondents filed a motion for summary judgment against "Glenn R. Waite, Personal Representative of Harriet I. Waite, deceased", not against "Glenn R. Waite". Thereafter, one of the Personal Representative's attorneys entered a general appearance and appeared at the September 3, 1991 hearing. The judgment was only against the personal representative and another of his attorneys prosecuted the first appeal [App. of Pet. 32] and represented only the personal representative interests. Then, it was "Glenn R. Waite" who prosecuted the second appeal [Reply Brief App. 1].

"Glenn R. Waite, Personal Representative of Harriet I. Waite, deceased" represents the beneficial interests of "Glenn R. Waite" in the estate because he the sole distributee [App. of Reply Brief 2-4]. A personal representative of a decedent only represents the benefical interests of the successors to the estate assets and the rights of the decedent, but he cannot represent the individual constitutional rights and property rights of the heirs. Therefore, "Glenn R. Waite" is an indispensable party in this proceeding in order to represent his own federal rights.

TABLE OF CONTENTS

Page

Questions Presented.....i

List of Parties.....ii

Table of Contents.....iii

Table of Authorities.....iv

Opinions Below.....1

Summary of the Rebuttal Argument.....1

Reasons for Granting the Writ.....2

I. Respondents concede that Petitioner raised a federal question in his objection to the Respondents' motion for summary affirmance, but fail to point out that their Motion for Dismissal & Affirmance and Memorandum Brief for the first time raised the "law-of-the-case doctrine" issue which addressed Petitioner's rights under Art.IV, sec. 2, cl. 1 and amendments 1 and 14 of the U.S. Constitution.....2

II. Respondents claim that any federal question raised by the Petitioner was not decided adversly to the Petitioner because the Court of Appeals overruled the Respondents' Motion for Summary Affirmance. However, the Respondents fail to point out that the Court of Appeals did in fact decide the "law-of-the-case doctrine" issue (which was a central issue raised in the Respondents' Motion for Dismissal & Summary Affirmance) adversly to the Petitioner by finally holding that, under the law-of-the-case doctrine, trial court lacked jurisdiction to consider plaintiff's motion.....6

Table of Contents -Continued

Page

III. Respondents simply state that even if Petitioner had raised a federal question below, the two underlying decisions found at Waite I and Waite II are based on sound state law that has no bearing on any federal issue. However, Respondents fail to cite any state cases to support the fact that the decision in fact rests on an adequate and independent state substantive ground.....7

Conclusion.....10

TABLE OF AUTHORITIES

Cases: Page

Abie State Bank v. Bryan, 282 US 765, 75 Led 690 (1931).....8

Chicago B. & Q Ry. Co. v. Illinois, 200 US 561, 50 L Ed 596, 26 S Ct 341 (1906).7, 9

Ford v. Georgia, 498 US 411, 112 L Ed2d 935, 111 S Ct 850 (1991).....8

Fuentes v. Shevin, 407 U.S. 67, 32 L Ed 2d 556, 92 S Ct 1983 (1972).....4

Goss v. Lopez, 419 U.S. 565, 42 L Ed 2d 725, 95 S Ct 729 (1975).....4

Harrington v. Hayes County, 81 Neb.231, 115 N.W.773 (1908),73ALR2d 1286.....4

Howlett v. Rose, 496 U.S., 110 L Ed 2d 332, 110 S Ct 2430 (1990).....8

In re Wecker's Estate, 123 Neb. 504, 243 N.W. 642 (1932).....9

Johnson v. Mississippi, 403 U.S. 212, 29 L Ed 2d 423, 91 S Ct 1778 (1971).....5

Nedela v. Mares Auto Co., 110 Neb. 108, 193 N.W. 345 (1923).....8

Re Murchison, 349 U.S. 133, 99 L Ed 942, 75 S Ct 623 (1954).....5

Security State Bank v. Gugelman, 230 Neb. 842, 434 N.W.2d 290 (1989).....9

System Meat Co. v. Stewart, 190 Neb. 682, 211 N.W.2d 902 (1973).....6, 9

Tank v. Peterson, 228 Neb. 491, 423 N.W.2d 752 (1988).....9

Table of Authorities - continued

Page

Tumey v. Ohio, 273 U.S. 509, 71 L Ed 749 (1926).....5

United States v. United States Smelting, R. & M. Co., 339 U S 186, 94 L Ed 750 (1949).10

Waite v. Carpenter, et. al., 1 Neb. App. 321, 496 N.W.2d 1 (1992).....7, 8, 9

Waite v. Carpenter, et. al., 3 Neb. App. 879, 533 N.W.2d 917 (1992)..7, 8, 9, 10

Ward v. Monroeville, 409 U.S. 57, 34 L Ed 2d 267, 93 S Ct 80 (1972).....5

Wardius v. Oregon, 412 US 470, 37 L Ed2d 82, 93 S Ct 2208 (1973).....8

Watkins v. Dodson, 159 Neb. 745, 68 N.W.2d 508 (1955).....4

Wicker v. Vogel, 246 Neb. 601, 521 N.W.2d 907 (1994).....9

Williams v. Bruffy, 102 U.S. 135 (12 Otto 248 (1880).....9

Wisconsin v. Constantineau, 400 U.S. 433, 27 L Ed 2d 515, 91 S Ct. 507 (1971).....4

Statutes and Other Authorities:

Neb. Rev. Stat. section 30-2401 (Reissue 1989).....4

U.S. Constitution, Art. IV, sec 2, cl. 1 and amendments 1 and 14.....2, 3

Nebraska Constitution, Art. I, sec 13.....3

Rule 14.1 of the New Rules of the Supreme Court, 161 F.R.D. 483 (1995).....1

To the Honorable Supreme Court:

Petitioner, Glenn R. Waite, most respectively requests that this Court grant his Petition for Writ of Certiorari to the Nebraska Court of Appeals because (1) Petitioner set up and claimed a title, right, privilege or immunity under the U.S. Constitution, (2) the Nebraska Court of Appeals decided the federal claims against the petitioner, and (3) the decision of the Nebraska Court of Appeals does not rest on independent and adequate state grounds.

OPINIONS BELOW

The Respondents [Brief Opp. 1] fail to cite the opinion of the Nebraska Probate Court which is in the Petition [Pet. 6 and 49-58]. Apparently, the Respondents do not want this Court to recognize the individual rights of Petitioner as heir of decedent.

Rule 14.1 of the New Rules of the Supreme Court of the United States (161 F.R.D. 483 at 492 (1995) states that the Petition must include "orders entered in the case by courts or admininstrative agencies". This would include any orders by the Nebraska Probate Court.

SUMMARY OF THE REBUTTAL ARGUMENT

Respondents do concede that Petitioner raised a title, right, privilege or immunity under the U.S. Constitution in the Petitioner's Objection to Respondents' Motion for Summary Affirmance [Brief Opp. 4], but Respondents fail to recognize that (1) the Nebraska Court of Appeals decided the federal claims against the petitioner, and (2) the decision of the Nebraska Court of Appeals does not rest on independent and adequate state grounds. This Court has jurisdiction to hear the petition.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

There are three reasons why this Court should grant the Petition for Writ of Certiorari to the Nebraska Court of Appeals: (1) Petitioner set up and claimed a title, right, privilege or immunity under the U.S. Constitution, (2) The Nebraska Court of Appeals decided the federal claims against the petitioner, and (3) the decision of the Nebraska Court of Appeals does not rest on independent and adequate state grounds.

I. Respondents concede that Petitioner raised a federal question in his objection to the Respondents' motion for summary affirmance, but fail to point out that their Motion for Dismissal & Affirmance and Memorandum Brief for the first time raised the "law-of-the-case doctrine" issue which addressed Petitioner's rights under Art. IV, sec 2, cl. 1 and amendments 1 and 14 of the U.S. Constitution.

The Respondents, W. Scott Carpenter, M.D. et. al., in their Memorandum Brief in Support of Motion for Summary Dismissal and Affirmance argue that Section I of Appellant's Brief raises only issues that should have been raised in the previous appeal. That Memorandum Brief states:

> "Clearly these issues are issues that should have been raised, and could have been raised, and probably were raised, by Appellant in his previous appeal and fully adjudicated by this court in its previous opinion. As such, this court's previous opinion and the Nebraska Supreme Court's overruling of appellant's Petition for Review becomes the law of the case and Appellant is bound by those decisions."

In opposition to this argument by Respondents, the Petitioner, referring to

Section I of his Appellant Brief which claimed a federal right ("Plaintiff has a right of access to the courts protected by Art. I sec 13 of the Nebraska Constitution and Art. 4, sec. 2, cl. 1 and amendments 1 and 14 of the U.S. Constitution." [Petition 9]), argued that the federal claim was a new fact issue not disposed by the previous appeal and stated the following to support his federal claim:

> "THE TRIAL COURT'S VIOLATION OF THE RIGHTS OF GLENN R. WAITE UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IS A SUBSTANTIAL QUESTION FOR REVIEW IN THIS APPELLATE COURT. In cooperation with the Appellees, the trial court as a judicial branch of the State of Nebraska has twice violated my rights under the fourteenth amendment to the United States Constitution which states:
>
> > "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."
>
> The trial court has twice deprived me of life, liberty, or property, without due process of law. First, in the trial court on September 3, 1991 when a disqualifed judge participated in the hearing and Second, when the Honorable Judge Kortum presided in the hearing on plaintiff's motion for new trial when a motion and affidavit of disqualification appeared in the court records and was not disposed of prior to the hearing. An application for a

change of judge is timely if made upon the disqualifying facts, even though this is beyond the time normally allowed for the application; Harrington v. Hayes County, 81 Neb.231,115 N.W.773(1908),73ALR2d 1286.

A chose in action is property of intestate which devolves by statute of descent upon the next of kin instantly at death. Neb. Rev. Stat. section 30-2401 (Reissue 1989). Property acquired by statutory entitlement is protected by the fourteenth amendment; Fuentes v. Shevin, 407 U.S. 67, 32 L Ed 2d 556, 92 S Ct 1983 (1972). Where the judicial branch of the State of Nebraska holds a hearing on Appellees' motion for summary judgment raising the issue of unauthorized practice of law of the personal representative, it goes to matters of the personal representative's good name, reputation, honor, or integrity. The requirements of procedural due process are applicable where a state attaches a badge of infamy to a citizen. The due process clause forbids a State from depriving a person of his liberty without due process of law; Wisconsin v. Constantineau, 400 U.S. 433, 27 L Ed 2d 515, 91 S Ct. 507 (1971) and Goss v. Lopez, 419 U.S. 565, 42 L Ed 2d 725, 95 S Ct 729 (1975). The indispensible elements of due process are tribunal with jurisdiction, notice of hearing to the proper party, and an opportunity for a fair hearing according to applicable principles; "Due process of law" implies the right of the person affected to be present before the tribunal which pronounces judgment upon the question of life, liberty or property, to be heard by testimony or otherwise and to have the right of controverting by proof every material fact which bears on the question of right in the matter involved; Watkins v. Dodson, 159 Neb. 745, 68 N.W.2d 508

(1955). On pages 30 through 34 of Appellant's brief, Appellant discusses his right to be heard by testimony or otherwise, and how trial court abused this process.

A fair trial, as required by due process, requires not only an absence of actual bias on the part of the judge, but also that no man be a judge in his own case or try cases where he has an interest in the outcome; Tumey v. Ohio, 273 U.S. 509, 71 L Ed 749 (1926); Re Murchison, 349 U.S. 133, 99 L Ed 942, 75 S Ct 623 (1954); Johnson v. Mississippi, 403 U.S. 212, 29 L Ed 2d 423, 91 S Ct 1778 (1971); and Ward v. Monroeville, 409 U.S. 57, 34 L Ed 2d 267, 93 S Ct 80 (1972). The unfair trial cannot be corrected upon appeal. See Ward v. Monroeville, supra. A financial interest of a court in its decision constitutes that an unfair and partial tribunal within the prohibition of the 14th Amendment; Tumey v. Ohio, supra. In Tumey v. Ohio, supra, the court stated:

> "Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused denies the latter due process of law."

Where the trial court denies a litigant's request for a hearing on the merits and for an opportunity to show why a judge should recuse himself, it violates due process under the 14th amendment; Johnson v. Mississippi, supra. Even if a litgant failed to move under a state statute for the disqualification of a judge to sit, he may urge in the U.S. Supreme Court that his trial before the judge violated his 14th amendement rights; Ward v. Monroeville, supra."

It is quite clear that Petitioner set up and claimed a right under the U. S. Constitution in both his Appellant brief and in his objection and memorandum brief in opposition to the Respondents' Motion for Dismissal & Summary Affirmance.

II. Respondents claim that any federal question raised by the Petitioner was not decided adversly to the Petitioner because the Court of Appeals overruled the Respondents' Motion for Summary Affirmance. However, the Respondents fail to point out that the Court of Appeals did in fact decide the "law-of-the-case doctrine" issue (which was a central issue raised in the Respondents' Motion for Dismissal & Summary Affirmance) adversly to the Petitioner by finally holding that, under the law-of-the-case doctrine, trial court lacked jurisdiction to consider plaintiff's motion.

Respondents state [Brief Opp. 8] that the requirements that the federal question was actually decided adversly to Petitioner are clearly not met.

Respondents are correct that the Court of Appeals overruled their motion for summary affirmance. However, Respondents fail to point out from the record that the Court of Appeals did in fact rule adversly to Petitioner on the law of the case doctrine issue [App. of Pet. 22-25]. This issue involved a federal question which was raised in the Respondents' Memorandum Brief in support of their Motion for Summary Affirmance and in Petitioner's Objection and Memorandum Brief in Opposition to Respondents' Motion as set forth previously. The law of the case doctrine does not apply where the issues are different and the parties are acting in different capacities; System Meat Co. v. Stewart, 190 Neb. 682, 211 N.W.2d 902 (1973). Petitioner has

clearly shown that the issue in Waite II is whether the trial court's judgment in Waite I is a valid judgment and the issue turns on a federal question, whereas, in Waite I, the issue was whether the pleadings were a nullity and the validity of the judgment was not raised or decided in Waite I. However, in Waite II, the Court of Appeals decided the validity of the first judgment which decision turned on a federal question and used a local rule or procedure to defeat federal jurisdiction. In Chicago B. & Q Ry. Co. v. Illinois, 200 US 561, 50 L Ed 596, 26 S Ct 341 (1906), the court held that failure to recognize a federal right or immunity, and the decision of the case on some ground of general or local law, necessarily has the same effect as if the claim of Federal right or immunity had been expressly denied.

It is quite clear that the federal questions raised by the Petitioner were necessary to the state court's determination of the law of the case doctrine issue and were decided adversly to Petitioner by the Nebraska Court of Appeals.

III. Respondents simply state that even if Petitioner had raised a federal question below, the two underlying decisions found at Waite I and Waite II are based on sound state law that has no bearing on any federal issue. However, Respondents fail to cite any state cases to support the fact that the decision in fact rests on an adequate and independent state substantive ground.

Respondents merely state [Brief Opp. 8-9] that the decisions in Waite I and Waite II are based on sound state law without citing any state cases to support their position and without examining the decisions in substance to see if the decisions do in fact rest on independent and adequate state

substantive grounds. This Supreme Court rejects any claims that an adequate state ground exists where no state cases are cited in support of this proposition; Wardius v. Oregon, 412 US 470, 37 L Ed2d 82, 93 S Ct 2208 (1973). The Supreme Court has an independent obligation to ascertain whether an asserted non-federal ground independently and adequately supports the judgment of a state court and has a fair or substantial basis; Howlett v. Rose, 496 U.S., 110 L Ed 2d 332, 110 S Ct 2430 (1990). Where a federal ground being present, it is incumbent upon the Supreme Court of the United States, when it is urged that the decision of a state court rests upon a state ground, to ascertain for itself, in order that constitutional guarantees may appropriately be enforced, whether the asserted state ground independently and adequately supports the judgment; Abie State Bank v. Bryan, 282 US 765,75 Led 690 (1931).

Is the state ground substantially adequate?

In Ford v. Georgia, 498 US 411, 112 L Ed2d 935, 111 S Ct 850 (1991), this Court held that only a state practice that is "firmly established and regularly followed" at the time at which it is applied may be interposed to prevent subsequent review by this Court.

In Waite II, the Court of Appeals held that, under the law-of-the-case doctrine, trial court lacked jurisdiction to consider plaintiff's motion. However, in Waite II the issues and questions are different from the questions in Waite I.

It is an established rule of law in Nebraska that where the issues and questions are different between the first appeal and the second appeal, the "law of the case doctrine" does not apply; Nedela v. Mares Auto Co., 110 Neb. 108, 193 N.W. 345 (1923);

In re Wecker's Estate, 123 Neb. 504, 243 N.W. 642 (1932); System Meat Co. v. Stewart, 190 Neb. 682, 211 N.W.2d 902 (1973); Tank v. Peterson, 228 Neb. 491, 423 N.W.2d 752 (1988); Security State Bank v. Gugelman, 230 Neb. 842, 434 N.W.2d 290 (1989); and Wicker v. Vogel, 246 Neb. 601, 521 N.W.2d 907 (1994). I find no cases in Nebraska which change this rule of law.

The Court of Appeals did not strictly and regularly follow this state procedural rule in Waite II. In Waite II, the issue is whether the former judgment is void and whether the trial court violated the petitioner's rights under the 14th amendment to the U.S. Constitution; whereas in Waite I, the issue was only whether or not there was any genuine issue as to any material fact as to whether the personal representative's pleadings were a nullity.

Is the state ground independent?

The U.S. Supreme Court may review the decision of the highest court of a State, which affirms or denies the validity of the judgment of an inferior court over which it has authority if such decision involves a federal question; Williams v. Bruffy, 102 U.S. 135 (12 Otto 248) (1880). If the state ground is so interwoven with the federal ground as not to be an independent matter or is not of sufficient breath to sustain the judgment without any decision on the federal ground or is a mere device to prevent a review of the decision upon the federal question, and if a federal right or immunity was specially set up and claimed which, if recognized and enforced, would require a different judgment, the Supreme Court's jurisdiction is plain; Chicago B. & Q Ry. Co. v. Illinois, 200 US 561, 50 L Ed 596, 26 S Ct 341 (1906).

If Waite I is constitutionally invalid

because the trial court and court of appeals violated Petitioner's 14th amendment rights, then it would require a different judgment in Waite II because the "law-of-the-case" doctrine like res judicata does not apply where the former judgment is constitutionally invalid or not final; United States v. United States Smelting, R. & M. Co., 339 U S 186, 94 L Ed 750 (1949).

Furthermore, cases 38269, 38270, and 38279 assigned to Judge Robert O. Hippe in the Scotts Bluff District are still pending and the federal case against Judge Robert O. Hippe and Attorney James A. Snowden is still pending on appeal (App. of Pet. 87-88).

It is clear that the Judgment in Waite v. Carpenter, et. al., 3 Neb. App. 879, 533 N.W.2d 917 (1992) does not rest on adequate and independent substantive state grounds.

CONCLUSION

Petitioner, Glenn R. Waite, prays that this Court will grant his petition for writ of certiorari to the Nebraska Court of Appeals because (1) Petitioner set up and claimed a title, right, privilege or immunity under the U.S. Constitution, (2) the Nebraska Court of Appeals decided the federal claims against the petitioner, and (3) the decision of the Nebraska Court of Appeals does not rest on independent and adequate substantive state grounds. This Court has jurisdiction under 28 U.S.C. 1257.

Respectively Submitted,

Glenn R. Waite
Petitioner
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

REPLY BRIEF APPENDIX

TABLE OF CONTENTS

	Page
Notice of Appeal	1
Distribution of Estate Assets	2, 3, 4

APPENDIX

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. W. SCOTT CARPENTER, M.D., REGIONAL WEST MEDICAL CENTER, SCOTTSBLUFF INTERNAL MEDICINE GROUP, Defendants.	)	NO. 38267 **NOTICE OF APPEAL**

TO: W. SCOTT CARPENTER, M.D.; REGIONAL WEST MEDICAL CENTER; AND SCOTTSBLUFF INTERNAL MEDICINE GROUP AND THEIR ATTORNEYS OF RECORD: Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114; & James A. Snowden, 1000 NBC Center, Lincoln, NE 68508;

Plaintiff, Glenn R. Waite, individually, as the sole distributee and sole beneficiary of the estate of Harriet I. Waite hereby notifies you that he intends to prosecute an appeal to the COURT OF APPEALS / SUPREME COURT for the State of Nebraska from the decision of the honorable Judge Alfred J. Kortum on April 18, 1994 in which he overruled the Plaintiff's Motion for New Trial which was heard by Judge Kortum in chambers.

Dated this the 2nd day of May 1994.

GLENN R. WAITE
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing Notice of Appeal to be served upon Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114; and James A. Snowden, 1000 NBC Center, Lincoln, NE 68508 by regular U. S. Mail this the 2d day of May 1994.

Glenn R. Waite

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE OF HARRIET I. WAITE, Deceased	)))	NO. PR90-78 **DISTRIBUTION OF ESTATE ASSETS**

COMES NOW, Glenn R. Waite, Personal Representative of the above decedent, and hereby, pursuant to section 30-24,105 of the Neb. Rev. Stat. (Reissue 1989), assigns, tranfers and releases all interests in the following estate asset:

the chose in action involving a claim for negligence in the care and treatment of the Decedent, Harriet I. Waite,

to himself, Glenn R. Waite, individually, who is the sole heir at law under intestate succession and the sole beneficiary of the decedent's estate.

Glenn R. Waite, Personal Representative of the above decedent, being first duly sworn on oath, deposes and states the following based on personal knowledge:

Harriet I. Waite died intestate on April 17, 1989 and her only surviving spouse was Peter A. Waite, and her only surviving issue were Beverly E. Sipple, natural daughter; Doris R. Butler, natural daughter; and Glenn R. Waite, natural son. Peter A. Waite, Beverly E. Sipple, Doris R. Butler, and Glenn R. Waite are the sole and only heirs at law of the above decedent. There are no other natural or legal heirs.

All heirs, excepting Glenn R. Waite, have filed with the clerk of this court a written instrument of Renunciation of Succession, Affidavit, and Assignment. This leaves Glenn R. Waite to be the sole surviving heir at law under intestate succession.

_____
Glenn R. Waite
Personal Representative
1202 West 28th St.
Cheyenne, WY 82001

STATE OF WYOMING) ss.
COUNTY OF LARAMIE)

ACKNOWLEDGMENT:

Before me personally appeared Glenn R. Waite and he acknowledged the above document and signed the execution of the above in my presence.

_____
Notary Public

Dated this the 29th day of November 1993.

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE OF HARRIET I. WAITE, Deceased	)))	NO. PR90-78 **DISTRIBUTION OF ESTATE ASSETS**

COMES NOW, Glenn R. Waite, Personal Representative of the above decedent, and hereby, pursuant to section 30-24,105 of the Neb. Rev. Stat. (Reissue 1989), assigns, tranfers and releases all interests in the following estate assets:

Any and all property, real or personal, wherever stituated; any and all causes of action, and any other estate assets, wherever situated,

to himself, Glenn R. Waite, individually, who is the sole heir at law under intestate succession and the sole beneficiary of the decedent's estate.

Glenn R. Waite, Personal Representative of the above decedent, being first duly sworn on oath, deposes and states the following based on personal knowledge:

Harriet I. Waite died intestate on April 17, 1989 and her only surviving spouse was Peter A. Waite, and her only surviving issue were Beverly E. Sipple, natural daughter; Doris R. Butler, natural daughter; and Glenn R. Waite, natural son. Peter A. Waite, Beverly E. Sipple, Doris R. Butler, and Glenn R. Waite are the sole and only heirs at law of the above decedent. There are no other natural or legal heirs or interested persons in the estate. The decedent had no debts when she died and there have never been any claims filed against the personal representative.

All heirs, excepting Glenn R. Waite, have filed with the clerk of this court a written instrument of Renunciation of Succession, Affidavit, and Assignment. This leaves Glenn R. Waite to be the sole surviving heir at law under intestate succession and sole distributee.

_____
Glenn R. Waite
Personal Representative
1202 West 28th St.
Cheyenne, WY 82001

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

ACKNOWLEDGMENT:

Before me personally appeared Glenn R. Waite and he acknowledged the above document and signed the execution of the above in my presence.

_____
Notary Public

Dated this the 1st day of November 1995.